

Exhibit E

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

States of LOUISIANA, *et al.*,

Plaintiffs,

v.

Civ. Action No.

XAVIER BECERRA, *et al.*,

Defendants.

**DECLARATION OF
KIMBERLY G. BOSWELL**

I, Kimberly G. Boswell hereby declare:

Background and Experience

1. I make this declaration based on my personal and professional knowledge and experience, information available to me in my position in public service, and publicly available information.
2. I am the Commissioner for the State of Alabama Department of Mental Health (“ADMH”).
3. As the Commissioner of ADMH, I am responsible for overseeing the budgets and financial operations as well as the overall operations of ADMH. As an ADMH executive, I have been involved with the Department’s response efforts to the COVID-19 pandemic. Among other things, one of my primary duties is to assess the ways the Department’s actions will impact its financial health.

The Alabama Department of Mental Health

4. ADMH is an agency of the State of Alabama and receives funding from the State.
5. ADMH is the state agency primarily responsible for serving Alabama citizens with mental illnesses, intellectual disabilities, and substance use disorders.
6. ADMH is a provider of mental health services and operates mental health centers.
7. I have reviewed Interim Final Rule of the Department of Labor, Occupational Safety and Health Administration 29 CFR Parts 1910, 1915, 1917, 1918, 1926 and 1928 (“the mandate”) and understand that the mandate requires certain Medicare and

Medicaid providers and suppliers to, in turn, require their covered employees to be “fully vaccinated” by January 4, 2022.

8. At least two ADMH psychiatric facilities are covered by the mandate—the Mary Starke Harper Geriatric Psychiatry Center and Bryce Hospital. These facilities are staffed by 664 state employees and 65 private temporary workers.
9. ADMH also serves roughly 500,000 Alabamians through its substance abuse programs. These programs may also be covered by the mandate.
10. State law prohibits ADMH from soliciting its employees’ vaccination status. *See* Ala. Act. 2021-493 § 1(a). However, about half of all Alabamians have not received the COVID-19 vaccine, and it is reasonable to assume that roughly the same proportion of ADMH employees have not received the vaccine either.
11. ADMH stands to lose funds if it does not comply with CMS Mandate. The Department received over 600 million dollars from the federal government this year.

The Impact of the CMS Mandate on ADPH

12. We estimate that roughly 40% of our covered unvaccinated employees may resign if we are forced to enforce the CMS Mandate.
13. Losing employees due to the CMS mandate jeopardizes the ability of ADMH and, accordingly, of the State to serve Alabama citizens with mental illness.
14. Because the CMS Mandate requires all covered employees to be fully vaccinated by January 4, ADMH would need all impacted employees to begin the vaccination process by December 5, 2021 for the Pfizer and Moderna vaccines, and within the next six weeks for the Johnson and Johnson vaccine.
15. ADMH already faces difficulties in fully staffing its facilities. If ADMH were to lose employees, it would be implausible in today’s labor market to quickly recruit, hire, and train additional employees for this work.
16. ADMH has many additional programs that might be covered and burdened by the mandate.
17. The federal government’s deadlines have made compliance extremely difficult, if not impossible.
18. If ADMH does not comply with the CMS Mandate, then the Department will lose significant funding for its programs. If ADMH complies with the CMS Mandate, it stands to lose a significant percentage of its workforce.

19. The CMS Mandate therefore forces ADMH to choose between losing funding and losing workers. In either event, the CMS Mandate will render the Department less effective and will jeopardize the welfare of the Alabamians who depend upon ADMH's programs.

20. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

11/15/2021
Date

Kimberly G. Boswell
Kimberly G. Boswell
Commissioner
Alabama Department of Mental Health

Sworn to and subscribed by me this the 15th day of November 2021

Cecelia D. Moore
NOTARY PUBLIC

My Commission Expires

CECELIA D. MOORE
NOTARY PUBLIC
ALABAMA STATE AT LARGE
COMM. EXP. 06/23/22